No. 20,123

In the United States Court of Appeals for the Ninth Circuit

JORGE HEDDERICH, JR., APPELLANT

v.

EDGAR W. RICHARDS, AND UNITED STATES OF AMERICA, APPELLEES

On Appeal from the Judgment of the United States District Court for the Southern District of California

BRIEF FOR THE UNITED STATES

RICHARD M. ROBERTS,
Acting Assistant Attorney General.

LEE A. JACKSON,
JOSEPH KOVNER,
ANTHONY ZELL ROISMAN,
Attorneys,
Department of Justice,
Washington, D.C. 20530.

Of Counsel:

MANUEL L. REAL,
United States Attorney.

LOYAL E. KEIR,
Assistant United States Attorney.

INDEX

CITATIONS

Cases:

In the United States Court of Appeals
for the Ninth Circuit

No. 20,123

JORGE HEDDERICH, JR., APPELLANT

v.

EDGAR W. RICHARDS, AND UNITED STATES OF AMERICA, APPELLEES

On Appeal from the Judgment of the United States District Court for the Southern District of California

---

BRIEF FOR THE UNITED STATES

OPINION BELOW

The memorandum and order and findings of facts and conclusions of law of the District Court (I-R. 15-28)[1] are not officially reported.

JURISDICTION

This action was brought on a complaint (I-R. 2-6) filed November 22, 1961, in the United States District Court for the Southern District of California to collect on a promissory note. The United States was

[1] I-R. references are to the reproduced transcript of the record.

named a party defendant pursuant to 28 U.S.C., Section 2410(a). Assessments for unpaid taxes had been made against Henry Albachten, payee of the promissory note, on July 23, 1957, in the sums of $62,701.98 for 1952, $114,543.53 for 1953 and $33,-331.96 for 1954 and notices of the liens were filed in Ashland, Oregon, Albachten's residence, on July 26, 1957. (I-R. 23-24.) A notice of levy with respect to the tax liability was served on Edgar W. Richards, maker of the promissory note, on September 13, 1957. (I-R. 25.) Jurisdiction was conferred on the District Court by 28 U. S. C., Section 1332(a). The judgment of the District Court was originally entered on May 20, 1964 (I-R. 58-59), but later vacated and re-entered on March 9, 1965 (I-R. 29-30), in order to permit the plaintiff to perfect this appeal (I-R. 67). On March 25, 1965, a notice of appeal was filed. (I-R. 32-33.) Jurisdiction is conferred on this Court by 28 U. S. C., Section 1291.

QUESTIONS PRESENTED

1. Whether the District Court was correct in holding that prior recordation of the United States tax liens gave the United States priority to an obligation due the taxpayer over an assignee of the obligation or a subsequent holder of the obligation who did not pay adequate consideration for it.

2. Whether, alternatively, service of a tax levy on a debtor of the taxpayer entitled the United States to recover under Section 6332(b) of the Internal Revenue Code of 1954 the amount of the debt when it came due from the debtor.

STATUTES INVOLVED

All relevant statutes are set forth in the Appendix, *infra.*

STATEMENT

Henry Albachten, taxpayer, managed a company developing a real estate subdivision, Chula Vista, at Lake Chapala, Mexico. In January, 1957, he negotiated with La Casa Electrica Company in which appellant Jorge Hedderich, Jr., had some interest and of which he was an employee for purchase in the future of electrical equipment and its installation in the subdivision. (I-R 23.)

On or about June 6, 1957, appellee Edgar W. Richards executed the following promissory note in favor of Henry Albachten in Los Angeles, California (I-R. 23):

> $21,875 June 6, 1957
>
> June 6, 1961 after date I promise to pay to the order of Rita or Henry Albachten at Los Angeles, California Twenty One Thousand Eight Hundred Seventy-Five and No/100 Dollars, for value received with interest at six (6) percent per annum from June 6, 1957 until paid. Interest payable at maturity of Note (simple interest) both principal and interest payable in lawful money of the United States.
>
> (signed) ANGELES ELEC CO.
> 9509 So. San Pedro - LA 3
>
> Due June 6, 1961 (signed) E. W. RICHARDS

Albachten, the payee, did not take possession of the document but left it in Richards' possession. (I-R. 23.)

Federal tax liens in the amount and of the type shown arose on the dates noted below and notices of tax liens were filed with the County Recorder of Ashland, Oregon, where Albachten resided, on the additional dates shown below (I-R. 23-24):

Type of Tax	Taxable Period	Amount Assessed	Assessment Date	Lien No.	Lien Filed
Income	1952	$ 62,701.98	7/23/57	54602	7/26/57
Income	1953	114,543.53	7/23/57	54602	7/26/57
Income	1954	33,331.96	7/23/57	54602	7/26/57

On or about July 30, 1957, in Gaudalajara, Mexico, taxpayer executed the following document (I-R. 24):

> Agreement—George Hedderich &
> Henry E. Albachten
>
> The undersigned hereby assignes all of his interest in that certain promissory note dated June 6, 1957 in the amount of $21,875.00 dlls (U.S.C.). This note is between "Angeles Electric Co., E. W. Richards and the undersigned. This assignment is to secure credit being advanced by Jorge Hedderich and I promise to endorse this note to Jorge Hedderich as soon as I receive possession.
>
> July 30, 1957
> Henry E. Albachten
>
> Accepted
> G. Hedderich

Hedderich, as an employee of La Casa, and Albachten apparently agreed in July, 1957, that the note should be accepted in lieu of cash for some of the work to be done on the subdivision. However, no legal binding contract of purchase of electrical equipment had ever been entered into and sufficient cash was paid subsequent to July, 1957, by the taxpayer such that Hedderich testified that "Chula Vista owed very little" at the time the note was delivered. The assignment of the note and its subsequent delivery was merely security for future installments of possible purchases. (I-R. 24-25.)

On September 13, 1957, notice of levy was served on Richards by Revenue Officer Lawrence Spencer. The levy has never been released. (I-R. 25.)

Special Agents Samuel Phoebus and Paul Corbett called on Richards at his office and discussed the note with him. The agents saw the note but declined to take it because they had no authority to take it. Richards did not inform the agents that three days before he had been served with a notice of tax lien. Agent Phoebus told Richards to hold the note and not deliver it to any other party. He also informed Richards that Albachten was in serious tax trouble. Richards understood that the notice of lien meant his obligation was to the United States rather than Albachten. (I-R. 25.)

In November or December of 1957, Albachten contacted Richards and asked for the note. Richards told him that there was a levy from the Government but Albachten replied, "I know that, and I have been up to the Internal Revenue people trying to straighten

this out, but, I would like the note". Richards then delivered the note to Albachten. (I-R. 25-26.)

On or about December 17, 1957, in Guadalajara, Mexico, Albachten delivered the note to Hedderich. (I-R. 26.)

On May 2, 1961, Hedderich wrote to Richards informing him that the note had been negotiated to Hedderich several years earlier and that payment should be made to his attorney on the due date. On the due date, June 6, 1961, Richards refused to pay the United States or Hedderich stating he was willing to pay either but not both. Hedderich then instituted this suit. (I-R. 26.)

The District Court held that Hedderich was not a "mortgagee, pledgee, or purchaser" "for an adequate and full consideration in money or money's worth" under Section 6323 of the Internal Revenue Code of 1954, and was thus subordinate to the earlier assessed and filed federal tax liens. (I-R. 20, 26.) It also held that no estoppel should apply against the United States noting that all parties had contributed to the situation and none was more blameworthy than the other. (I-R. 20-21, 26-27.) Thus, the court held that Hedderich was entitled to no recovery and the United States was entitled to recovery against Richards (I-R. 26-27) in the amount of $30,953 plus additional interest as provided by law (I-R. 30). This judgment was set aside and re-entered at a later date to allow Hedderich to perfect and file his appeal. (I-R. 67.) Notice of appeal was then timely filed by Hedderich. (I-R. 32.)

SUMMARY OF ARGUMENT

United States tax liens were filed against Henry Albachten on July 26, 1957. At that time Edgar Richards was indebted to the taxpayer and held as a memorandum of that debt an undelivered promissory note of which he was the maker and the taxpayer the payee. On July 30, 1957, taxpayer assigned all of his interest in the note to Jorge Hedderich. The United States by its recorded tax liens took priority over the subsequent assignee of any of the property of the taxpayer. The assignment was additionally defective because it purported to assign a promissory note which had never been delivered by the maker, Richards. Under California law the note had no legal significance and thus could not be assigned. Subsequent delivery of the note by Richards to the taxpayer and its additional delivery to Hedderich did not make Hedderich a "purchaser" of a "security" under Section 6323 (c) (1) of the Internal Revenue Code of 1954 because he did not prove that at that time he paid "an adequate and full consideration" for the note and the recorded tax lien gave the United States a prior right to the note even as against such a holder of the note.

Alternatively, the United States levied upon all property of the taxpayer in the hands of Richards. At that time Richards was indebted to the taxpayer and held as a memorandum of that debt the promissory note which had not been delivered to the taxpayer. This note was not property of the taxpayer and not subject to levy by the United States. The

United States levy seized the debt due the taxpayer. Subsequent delivery of the note to the taxpayer and its further delivery to a holder did not interfere with the United States' right to recover directly from Richards on the debt when it came due.

ARGUMENT

I

The District Court Was Correct In Holding That Prior Recordation of the United States Tax Liens Gave the United States Priority To An Obligation Due the Taxpayer Over An Assignee of the Obligation or a Subsequent Holder of the Obligation Who Did Not Pay Adequate Consideration for It

This case involves the claims of Jorge Hedderich, Jr., and the United States to a debt due the taxpayer Henry Albachten by Edgar W. Richards. Hedderich's claim is based upon an assignment and subsequent delivery to him of a promissory note on which Richards is the maker and Albachten is the payee and of which Hedderich claims to be a holder in due course. The United States claim is that its tax liens, notices of which were filed before the assignment to Hedderich, gave the United States a prior right to the obligation and that subsequent delivery of the obligation to Hedderich for an inadequate consideration did not alter that priority. Alternatively, although not raised in its answer or in the pre-trial order, the United States argued in its brief below that Richards, having been served with a federal tax levy covering the debt he owed the taxpayer, the levy being filed before the note had been de-

livered by the maker, was personally liable for the amount of the debt under Section 6332 of the Internal Revenue Code of 1954, Appendix, *infra*, for his failure to honor the levy.

At this point in our argument we shall consider the federal tax priority as against Hedderich. Briefly, this priority involves the provisions of Sections 6321 and 6323 of the Internal Revenue Code of 1954, Appendix, *infra*. Under these provisions, the federal tax lien arising upon assessment, is effective upon recordation as against any purchaser of a taxpayer's property, with the exception that actual notice of the federal tax lien is required to render it effective as against any purchaser for an adequate and full consideration in money or money's worth of a security, e.g. negotiable instruments or money. Hedderich's assignment falls within the recordation provisions of Section 6323(a), since the assignment of the undelivered promissory note cannot be regarded as the assignment of a negotiable instrument or money. *Worley* v. *United States*, 340 F. 2d 500 (C. A. 9th). Indeed, the undelivered note was, under California law, a nullity. "incomplete and revocable". Civil Code, 11 West's Annotated California Codes, Section 3097;[2] see also *Rogers* v. *Harris*, 138 Cal. App. 2d 1, 291 P. 2d 68; *Bogan* v. *Wiley*, 90 Cal. App. 2d 288, 202 P. 2d 824.

The federal tax lien in this case arose on July 23, 1957, and upon filing of notices on July 26, 1957 in

---

[2] All references to sections of the Civil Code will be to 11 West's Annotated California Codes.

Ashland, Oregon, the residence of the taxpayer (I-R. 23-24) became effective as against any subsequent assignees of any debts due the taxpayer. *Walker* v. *Paramount Engineering Co.* (C. A. 6th), decided December 2, 1965 (66-1 U.S.T.C., par. 9106); *Investment & Securities Co.* v. *United States*, 140 F. 2d 894, 895 (C. A. 9th). The assignment by Albachten to Hedderich, on which Hedderich first relies here, was executed on July 30, 1957, after recordation of the federal tax liens. (I-R. 24.)

It is clear beyond question that an assignee of any property of a taxpayer, for value or otherwise, is defeated by a United States tax lien which is recorded prior to the assignment. *Worley* v. *United States*, 340 F. 2d 500 (C. A. 9th); *Nelson* v. *United States*, 139 F. 2d 162, 163 (C. A. 9th, certiorari denied, 322 U.S. 764); *Citizens State Bank of Barstow, Tex.* v. *Vidal*, 114 F. 2d 380, 384 (C. A. 10th); *United States* v. *Phillips*, 198 F. 2d 634, 635-636 (C. A. 5th).[3] Thus at the time of the assignment Hedderich's interest in whatever property the taxpayer had assigned to him was encumbered with a prior perfected tax lien and additionally, the assignment was of a promissory note which did not legally exist.[4]

---

[3] The cases cited by Hedderich (Br. 16) are obviously inapplicable here because they did not involve creditors with liens on the property which were recorded prior to the assignee.

[4] It is significant that at the date of the assignment Hedderich must have been aware that he had received nothing of value for he (1) still hoped to recover cash rather than the note (II-R. 34 (II-R. references are to the transcript of proceedings); Ex. R-A, p. 38 (all references to Ex. R-A are to

Hedderich's alternative claim is that if he gained no superior rights by the assignment of the taxpayer's interest in the note, he nevertheless became a purchaser of the note without actual notice of the federal tax lien when the taxpayer later delivered the note to him on or about December 17, 1957. But, as previously stated, Section 6323(c)(1), 1954 Code only affords the protection of actual notice of a federal tax lien to those who pay "adequate and full consideration in money or money's worth" for a negotiable instrument. The District Court here has found as a fact that Hedderich did not pay adequate and full consideration, but very little, if any (I-R. 25, Finding of Fact 6), and has concluded, therefore, that Hedderich has failed to prove that he is within the protection of Section 6323(c)(1) 1954 Code (I-R. 26, Conclusion 2).[5]

The legal conclusion is beyond dispute, and the question on this branch of the case is therefore solely one of fact, whether the trial court's finding of fact

---

the deposition of Jorge Hedderich, February 15, 1963)) and (2) was fully aware that a note is transferable only by delivery (Ex. R-A, pp. 23-24).

[5] Even under California law, to be a holder in due course one must, *inter alia*, take the instrument "for value". Civil Code, Section 3133(3), Appendix, *infra*. The burden of proving adequate consideration is on the party claiming it where, as here, he has received a negotiable instrument from one whose title to the instrument was defective. Civil Code, Sections 3136, 3140, Appendix, *infra*. Albachten negotiated the note to Hedderich with full knowledge by Albachten of the prior tax liens and levy (I-R. 25-26; II-R. 71-72) and thus his title to the note was defective. Civil Code, Section 3136. *Bramante* v. *Krug*, 143 Cal. App 2d 771, 300 P. 2d 71.

is supported by evidence and not clearly erroneous. Federal Rules of Civil Procedure, Rule 52. An examination of the record demonstrates that there is ample evidence to support the finding. Indeed, in an attempt to meet his burden of proving full consideration Hedderich has offered almost no evidence. Specific proof such as books or records, which do exist (II-R. 16; Ex. R-A, pp. 19-20), or even precise dollars and cents figures (see for example II-R. 47-49) were never presented. All that was offered was the self-serving testimony of Hedderich himself of a "hazy business transaction" (I-R. 20). This testimony shows (1) that of the total price of $45,000 for goods to be delivered to Chula Vista approximately $20,000 for goods actually delivered had been paid before the assignment of the note and at that time very little was owed by Chula Vista to La Casa (II-R. 14-15, 21-22); (2) after the assignment Chula Vista continued to pay cash for at least some of the subsequently delivered materials and labor (II-R. 26, 34-37) and all deliveries were completed in October or November, 1957 (II-R. 23; Ex. R-A, p. 12); (3) at the time of the delivery of the note in December, 1957 "very little" was owed to La Casa by Chula Vista (Ex. R-A, p. 41; I-R. 20); and (4) not only was La Casa unwilling to take the note rather than cash (II-R. 17-18, 45) but even Hedderich, who took the note, hoped to get cash rather than have to depend upon the note for payment (Ex. R-A, p. 38) and even now does not consider foreclosed the possibility of collecting directly, albeit slowly, from Al-

bachten, without regard to the note (Ex. R-A, pp. 38-39). This testimony really suggests that the bulk of the payments had been made before the note was ever delivered, and in light of the unwillingness of both of the Hedderichs to accept anything other than cash it is extremely unlikely that they would have completed the contract without having the note in hand unless they had already received cash for their work.[6]

Another interesting point brought out by the testimony is that the only consideration alleged to have passed between La Casa and Chula Vista is a pre-existing debt inasmuch as all of the work here involved had been completed by November, 1957, before delivery of the note. (II-R. 23; Ex. R-A, p. 12.) Under California law a pre-existing debt will be ade-

---

[6] For the purpose of this discussion it has been assumed that if consideration passed from La Casa to Chula Vista it could be treated as consideration for the note. However, it is very doubtful that this record would support such an assumption, which assumption clearly favors Hedderich. In fact the holder of the note, Jorge Hedderich, Jr., is not the owner of La Casa (II-R. 9) and describes himself as a "[m]anager and salesman in my father's store" (II-R. 4). Hedderich has never proven that materials and labor, even if advanced to Chula Vista, were advanced at his personal expense although he alleges, without proof, that he is personally responsible to La Casa for the alleged advances (II-R. 47) and yet has never paid anything to La Casa (II-R. 24). In addition, Albachten was not the personal recipient of any advances to Chula Vista since he was apparently only a manager (II-R. 5, 22) and not an owner of the company developing the subdivision (II-R. 30-32). Thus, even if Hedderich personally made advances to Chula Vista the consideration did not flow to Albachten and thus could not be consideration for the note.

quate consideration for a promissory note only where it is specifically so agreed between the parties. *Bramante* v. *Krug, supra.* In that case the court stressed the need for some tangible evidence that the note was accepted as payment for the pre-existing debt such as a discharge of the indebtedness of the transferee by the transferor. It also noted that the requirement was not met if the transferor treated the debt due until he had actually received cash for the note. Here, no evidence has been presented to prove any discharge and the above noted testimony of Hedderich (Ex. R-A, pp. 38-39) suggests strongly that he still feels the debt exists and will only be discharged when he actually receives the cash.

Thus, not only has Hedderich failed completely to carry his burden of proving that he took the note for adequate consideration but the record establishes clearly that no adequate consideration was given for the note and therefore, Hedderich is not entitled to actual notice under Section 6323(c), 1954 Code. The United States tax liens which were filed before either the assignment or the actual transfer of the note take priority over the claim of Hedderich. The District Court's findings of fact and conclusions of law embodying the foregoing are beyond challenge here.

II

Alternatively, the Service of a Tax Levy On a Debtor of the Taxpayer Entitled the United States To Recover Under Section 6332(b) of the Internal Revenue Code of 1954 the Amount of the Debt When It Came Due From the Debtor

The second point is reached only if this Court should hold either that the assignment of July 30, 1957, from the taxpayer to Hedderich was a negotiable instrument, or that the finding of fact of the District Court to the effect that Hedderich did not give adequate and full consideration for the promissory note itself is clearly erroneous. In this posture, the Government argues that even if Hedderich has a right to payment on the note against the maker, Richards, nevertheless, Richards is liable to the United States for failure to honor a prior levy.

On September 13, 1957, the United States levied on all property of Albachten in the possession of Richards and by that levy Richards was obligated to give to the United States all such property if and when it came into his possession. (I-R. 25.) Section 6331 (a), 1954 Code, Appendix, *infra*. The United States levy resulted in "virtually a transfer to the government of the indebtedness". *United States* v. *Eiland*, 223 F. 2d 118, 121 (C. A. 4th); see also *Division of Labor Law Enforcement* v. *United States*, 301 F. 2d 82, 86 (C. A. 9th); *Kirby* v. *United States*, 329 F. 2d 735 (C. A. 10th). When, on July 6, 1961, the debt due Albachten of $27,875 matured (I-R. 5) and Richards failed to pay it to the United States (I-R. 26) he became personally liable to the United States

for the amount of the debt plus 6 percent interest on the amount until paid. *Sims* v. *United States*, 359 U. S. 108, 114; *Hoye* v. *United States*, 277 F. 2d 116, 120 (C. A. 9th). The failure of the United States to physically seize the promissory note, did not impair its right to recovery here against Richards based on its levy of September 13, 1957. At the time of the levy, the note was merely an undelivered promissory note in the possession of the maker and as such was "incomplete and revocable" (Civil Code, Section 3097; see also *Rogers* v. *Harris*, *supra*; *Bogan* v. *Wiley*, *supra*) and was not property or a right to property belonging to the taxpayer which could be levied upon by the United States. Section 6331, 1954 Code. In fact an attempt to seize the note, which was not property of the taxpayer, could have been successfully defeated by Richards. See for instance, *Pool* v. *Walsh*, 282 Fed. 620 (C. A. 9th); *Stuart* v. *Chinese Chamber of Commerce of Phoenix*, 168 F. 2d 709 (C. A. 9th). Thus the United States did all it was legally entitled to do and cannot be prejudiced for failing to do that which it had no authority to do.[7]

---

[7] The District Court judge, with full opportunity to hear the testimony and assess the veracity and accurateness of the witnesses, found that the revenue agents' account of what transpired between themselves and Richards regarding the note, namely that Richards was specifically told to hold the note, was correct. (I-R. 25.) This purely factual determination should not be disturbed unless it is shown to be clearly erroneous. *Commissioner* v. *Duberstein*, 363 U. S. 278; *United States* v. *Gypsum Co.*, 333 U. S. 364, 395.

When the note was transferred by Richards to Albachten, Richards had full knowledge of the United States lien and levy and the import thereof (I-R. 25) and thus Richards assumed the consequences that might ensue; i.e., the possibility of double liability if the note should be negotiated to a holder in due course. Any other result would permit a person upon whom a levy had been made for a debt due from him to the taxpayer to defeat the levy by paying the debt to another after levy. The alleged note, not as yet delivered, was no more than a memorandum of the obligation of Richards to the taxpayer. Richards cannot defeat the United States by creating out of the memorandum a negotiable instrument that was not negotiable at the time of the levy and then discharging his debt to the taxpayer by delivery of the instrument to the taxpayer. Thus Richards became obligated to pay the debt due the taxpayer to the United States when it came due and his issuance of a promissory note for the debt to the taxpayer after the levy does not relieve him of that liability. Section 6332(b), 1954 Code, Appendix, *infra*.

CONCLUSION

For either of the reasons stated above, the judgment of the District Court should be affirmed.

Respectfully submitted,

RICHARD M. ROBERTS,
Acting Assistant Attorney General.

LEE A. JACKSON,
JOSEPH KOVNER,
ANTHONY ZELL ROISMAN,
Attorneys,
Department of Justice,
Washington, D.C. 20530.

Of Counsel:

MANUEL L. REAL,
United States Attorney.

LOYAL E. KEIR,
Assistant United States Attorney.

JANUARY, 1966

CERTIFICATE

I certify that, in connection with the preparation of this brief, I have examined Rules 18 and 19 of the United States Court of Appeals for the Ninth Circuit, and that, in my opinion, the foregoing brief is in full compliance with those rules.

Dated: ..... day of ....., 1966.

.....
ANTHONY ZELL ROISMAN

APPENDIX

Internal Revenue Code of 1954:

SEC. 6321. LIEN FOR TAXES.

If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, additional amount, addition to tax, or assessable penalty, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person.

(26 U.S.C. 1958 ed., Sec. 6321.)

SEC. 6323. VALIDITY AGAINST MORTGAGEES, PLEDGEES, PURCHASERS, AND JUDGMENT CREDITORS.

(a) *Invalidity Of Lien Without Notice*—Except as otherwise provided in subsection (c), the lien imposed by section 6321 shall not be valid as against any mortgagee, pledgee, purchaser, or judgment creditor until notice thereof has been filed by the Secretary or his delegate—

(1) *Under state or territorial laws.*—In the office designated by the law of the State or Territory in which the property subject to the lien is situated, whenever the State or Territory has by law designated an office within the State or Territory for the filing of such notice; or

* * * *

(c) *Exception In Case Of Securities.*—

(1) *Exception.*—Even though notice of a lien provided in section 6321 has been filed in the manner prescribed in subsection (a) of this section, the lien shall not be valid with respect to a security, as defined in paragraph (2) of this subsection, as against any mortgagee, pledgee, or purchaser of such security, for an adequate and full consideration in money or money's worth, if at the time of such mortgage, pledge, or purchase such mortgagee, pledgee, or purchaser is without notice or knowledge of the existence of such lien.

(2) *Definition of security.*—As used in this subsection, the term "security" means any bond, debenture, note, or certificate or other evidence of indebtedness, issued by any corporation (including one issued by a government or political subdivision thereof), with interest coupons or in registered form, share of stock, voting trust certificate, or any certificate of interest or participation in, certificate of deposit or receipt for, temporary or interim certificate for, or warrant or right to subscribe to or purchase, any of the foregoing; negotiable instrument; or money.

* * * *

(26 U.S.C. 1958 ed., Sec. 6323.)

SEC. 6331. LEVY AND DISTRAINT.

(a) *Authority Of Secretary Or Delegate.*—If any person liable to pay any tax neglects or refuses to pay the same within 10 days after no-

tice and demand, it shall be lawful for the Secretary or his delegate to collect such tax (and such further sum as shall be sufficient to cover the expenses of the levy) by levy upon all property and rights to property (except such property as is exempt under section 6334) belonging to such person or on which there is a lien provided in this chapter for the payment of such tax. * * *

* * * *

(26 U.S.C. 1958 ed., Sec. 6331.)

SEC. 6332. SURRENDER OF PROPERTY SUBJECT TO LEVY.

(a) *Requirement.*—Any person in possession of (or obligated with respect to) property or rights to property subject to levy upon which a levy has been made shall, upon demand of the Secretary or his delegate, surrender such property or rights (or discharge such obligation) to the Secretary or his delegate, except such part of the property or rights as is, at the time of such demand, subject to an attachment or execution under any judicial process.

(b) *Penalty For Violation.*—Any person who fails or refuses to surrender as required by subsection (a) any property or rights to property, subject to levy, upon demand by the Secretary or his delegate, shall be liable in his own person and estate to the United States in a sum equal to the value of the property or rights not so surrendered, but not exceeding the amount of the taxes for the collection of which such levy has been made, together with costs and interest on

such sum at the rate of 6 percent per annum from the date of such levy.

* * * *

(26 U.S.C. 1958 ed., Sec. 6332.)

Civil Code, 11 West's Annotated California Codes:

§ 3097. *Delivery; necessity; when effectual; presumption.*

Every contract on a negotiable instrument is incomplete and revocable until delivery of the instrument for the purpose of giving effect thereto. * * * But where the instrument is in the hands of a holder in due course, a valid delivery thereof by all parties prior to him so as to make them liable to him is conclusively presumed. And where the instrument is no longer in the possession of a party whose signature appears thereon, a valid and intentional delivery by him is presumed until the contrary is proved.

§ 3111. *Negotiation defined.*

An instrument is negotiated when it is transferred from one person to another in such manner as to constitute the transferee the holder thereof. If payable to bearer it is negotiated by delivery; if payable to order it is negotiated by the indorsement of the holder completed by delivery.

§ 3133. *Holder in due course defined.*

A holder in due course is a holder who has taken the instrument under the following conditions:

* * * *

(3) That he took it in good faith and for value;

* * * *

§ 3136. *Defective title.*

The title of a person who negotiates an instrument is defective within the meaning of this title when he obtained the instrument, or any signature thereto, by fraud, duress, or force and fear, or other unlawful means, or for an illegal consideration, or when he negotiates it in breach of faith, or under such circumstances as amount to a fraud.

§ 3140. *Holder in due course; presumption; burden of proof.*

Every holder is deemed prima facie to be a holder in due course; but when it is shown that the title of any person who has negotiated the instrument was defective, the burden is on the holder to prove that he or some person under whom he claims acquired the title as holder in due course. * * *

☆ U. S. GOVERNMENT PRINTING OFFICE: 1966 799739 517